IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 669 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAYASINGBHAI NAYAK & 3 - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DEEPAK M SHAH for Appellant 3,MS HIMALI M DAVE for Appellant : 4,
MR RC KODEKAR APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

1. This appeal is directed against the judgment and order dated 10.6.1994 rendered by the learned Sessions Judge, Godhra in Sessions Case No.182 of 1991 convicting all the four appellants as original accused Nos.1 to 4 of

the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC) and sentencing them to life imprisonment and fine of Rs.500, in default, simple imprisonment for six months, for causing the death of Raijibhai on 17/18.12.1990.

2. The prosecution case, briefly stated, was that deceased Raijibhai and his son Narvatbhai were residing in village Chalawada in Panchmahals District. In the evening of 17.12.1990, deceased Raijibhai had gone to the bazar for purchasing vegetables but did not return home till late night. When Kalubhai, brother-in-law of the deceased, was going to the village in the morning of 18.12.1990, he saw the deceased lying in a field. The deceased was alive and, therefore, Kalubhai went to the house of the deceased and informed Narvatbhai, son of the deceased, that the deceased was lying in the field in the outskirts of the village. Narvatbhai and Kalubhai went to the field and Narvatbhai found his father lying in the field and bleeding. They rushed to the sarpanch of the village Ramanbhai. The sarpanch accompanied Narvatbhai to the field and asked the deceased Raijibhai as to who had assaulted him. The deceased told the sarpanch that the four appellants herein had assaulted him. When the sarpanch asked the deceased as to why the

appellants had assaulted him, the deceased could not answer and succumbed to the injuries. Narvatbhai, son of the deceased, thereafter lodged first information report with the Rajgadh Police Station. The F.I.R. was recorded by Mr.D.A.Parmar, police sub-inspector. Investigation was thereafter carried out. All the four appellants herein were arrested and chargesheeted. The appellants pleaded not guilty of the charge.

3. The prosecution examined the following witnesses in whose presence the deceased had disclosed the names of the four appellants:-

(i) PW.4 Ramanbhai Bariya, sarpanch. (Ex.14)

(ii) PW.5 Revaben Narvatbhai, widow of the complainant and daughter-in-law of the deceased (Ex.15).

(iii) PW.6 Savitaben wife of Kanu Bahyla, younger brother of the deceased (Ex.16).

As far as the complainant Narvatbhai is concerned, he died during pendency of the trial.

4. The prosecution also examined panch witness PW.8 Arvindbhai Nayalbhai (Ex.20), the investigating officer Mr.D.A.Parmar and PW.1 Dr.Madanlal Ramchandra Soni (Ex.9) who conducted the postmortem on the body of the deceased and produced the postmortem note at Ex.10.

5. After considering the documentary and oral evidence on record, the learned Sessions Judge held all the four appellants guilty of the offence punishable under Section 302 read with Section 34 IPC and sentenced them to life imprisonment.

6. It is the said judgment and order which is under challenge in this appeal.

7. During pendency of the appeal, the appellants had applied for regular bail which was not granted. However, when appellants Nos. 1 and 2, i.e. Raysingbhai Ruplabhai Nayak and Raghabhai Kalabhai Nayak, were temporarily released, they absconded in the year 1995 and 1996 respectively. Appellant No.3 Ranchhodbhai Ramsinhbhai Nayak has already undergone sentence for 11 years and appellant No.4 Amalabhai Ramsingbhai Nayak has undergone sentence for about 10 years. When the appeal came up for hearing on 8.9.2003, the appeal was not taken

up for hearing on the ground that appellants Nos.1 and 2 were absconding. Even now the said two appellants have not surrendered before the jail authority, but Mr.Deepak M.Shah, learned advocate for appellant No.3, submitted that appellants Nos.3 and 4 had already undergone sentence for 11 and 10 years respectively and particularly appellant No.3 who is still in jail, having undergone sentence for 11 years, may not be kept in jail indefinitely till the absconding accused persons return to jail. In view of the above submission, we have taken up the appeal for final hearing notwithstanding the fact that appellants Nos.1 and 2 are absconding. We have considered the fact that when appellant No.3 has already undergone sentence for 11 years, final hearing of the appeal was not required to be deferred in the facts and circumstances of the case.

8. Mr.Deepak M.Shah, learned advocate for appellant No.3, has made the following submissions:

(i) The incident is alleged to have taken place in the evening of 17.12.1990 and complainant Narvatbhai, son of the deceased, had gone to the filed where the deceased was lying, at about 10.00 a.m. in the morning, but the F.I.R. was lodged at 7.00 p.m. in the evening, hence the

delay is so gross as to cast doubt on the prosecution case;

(ii) There is no eye witness. All that the prosecution has relied is the evidence of three persons to the effect that the deceased had disclosed the names of the four appellants in their presence, but their evidence suffers from various contradictions. Their conduct is also unnatural inasmuch as if the deceased was alive when they went to the field in the outskirts of the village, the witnesses would have taken the deceased to hospital. The witness also did not ask any question to the deceased after the deceased allegedly disclosed the names of the four accused.

(iii) In any view of the matter, the accused are alleged to have given stick blows but the medical evidence does not show any signs of blows on any vital part of the body. The death has occurred on account of rupture of spleen without any fracture of ribs.

(iv) No specific role is attributed to any particular accused and no motive is also shown for the alleged offence, hence the accused persons deserve to be acquitted.

9. On the other hand, Mr.R.C.Kodekar, learned

A.P.P. has supported the judgment under appeal.

10. Before discussing the evidence of the other witnesses, a reference may be made to the medical evidence. The postmortem on the body of the deceased was performed by Dr.Dr.Madanlal Ramchandra Soni, PW.1 (Ex.9) and he produced postmortem note at Ex.10. The following injuries were noted in column No.17 of the postmortem report:

(i) CLW over the lateral aspect of the lower 1/3rd of right arm, 1" above right elbow joint size 1" x 1/2".

(ii) Multiple bruises over the left side of back at the level of 8th, 9th and 10th ribs.

The following external injuries were noticed in column No.21.

(i) Whole abdominal cavity is filled with dark colour blood. Multiple rupture of the spleen on the interior aspect.

(ii) Cause of death is mentioned as: Cardio Respiratory failure caused by excessive internal

haemorrhage due to rupture of spleen.

10. The doctor deposed that the injury resulting into rupture of the spleen was sufficient in the ordinary course of nature to cause death of the victim. The doctor also stated that the injuries were caused ante-mortem. The doctor also deposed that the injuries on the body of the deceased could have been caused by stick blows.

11. It is true that there is no eye witness and the prosecution has relied only on the oral dying declaration of the deceased before four persons, out of whom one had expired before the evidence was recorded. Other three persons are sarpanch Ramanabhai Bariya (PW.4), Revaben (PW.5) the wife of the complainant and daughter-in-law of the deceased and Savitaben (PW.6) wife of the younger brother of the deceased. All the three witnesses deposed that after they reached the field where the deceased was lying, the deceased had disclosed the names of four persons. It is true that the deceased did not disclose the motive for the assault, but it transpires from these witnesses that the deceased was shouting for water and after he took a glass of water, the deceased succumbed to the injuries. This is required to be appreciated in the background of the fact that the

deceased had already left his house the previous evening and the deceased appeared to have been assaulted in the late evening of 17.12.1990 and the deceased was lying unattended in a field in the outskirts of the village without getting any assistance or even a glass of water. In such circumstances, if the deceased could not speak further and succumbed to the injuries after disclosing the names of the four accused and further getting a glass of water, it cannot be said that absence of any further conversation between the deceased and the witnesses would throw any doubt on the version of the witnesses about disclosure of the names of the accused. No suggestions were made in the cross-examination of these witnesses as to why these witnesses would falsely involve the accused. Of course, only a faint suggestion was made in the cross-examination of the sarpanch that the sarpanch and the accused had some animosity and, therefore, he was giving such evidence. However, no details are given about the alleged dispute or animosity between the sarpanch and the accused and in their further statements under Section 313 Cr.P.C., the accused pleaded absolute denial without indicating any possible motive on the part of the sarpanch. Revaben is the daughter-in-law of the deceased and widow of the complainant. It would, therefore, be natural that said Revaben as well as Savitaben, wife of

the younger brother of the deceased, would rush to the spot on hearing that the deceased was lying in a field in the outskirts of the village, so also the complainant, son of the deceased, would rush to the spot and also it was natural on his part to rush to the sarpanch and inform him and to bring him to the place where the deceased was lying in an injured condition. Hence, we do not find any substance in the submissions being made on behalf of the appellants that the witnesses had reached the place after the deceased had succumbed to the injuries.

12. As regards the delay in lodging the F.I.R., it is true that the witnesses had gone to the village where the deceased was lying at about 10.00 a.m. in the morning and the deceased had succumbed to the injuries within an hour thereafter. During this period, the son of the deceased had gone to call the sarpanch and the witnesses had gathered together when the deceased breathed his last very soon, hence there was no scope for taking the deceased to hospital. As far as the time taken for lodging the F.I.R. is concerned, although the time between 11.00 a.m. And 07.00 p.m. may *prima facie* appear to be a little inordinate, it transpires from the evidence of the investigating officer Mr.D.A.Parmar that

he was busy with the bandobast as a State Minister was visiting the area and, therefore, the delay has been satisfactorily explained by the evidence on record.

13. Coming to the injuries inflicted on the deceased, it was vehemently submitted by Mr.Deepak Shah, learned advocate for appellant No.3, that there were no blows on any vital organ of the body, or on head, or on chest and, therefore, stick blows on the lower back of the deceased cannot be said to be such injuries which were inflicted with the intention to cause death of the deceased or with the knowledge that it would result into death.

14. Having gone through the postmortem note and the evidence of Dr.Madanlal Ramchandra Soni (PW.1) at Ex.9, who carried out the postmortem on the body of the deceased, there were several lacerated wounds on the left-side of the back of the deceased in the region of 8th, 9th and 10th ribs which resulted into rupture of spleen. The deceased was aged about 50 years and since the stick blows resulted into rupture of the spleen, the accused must at least be imputed with the knowledge that such heavy blows would result into injuries which may in the ordinary course cause death of the victim. Since the

deceased was all alone and the assault was made by four persons late in the evening or in the night of 17.12.1990 during winter season and the deceased was alive and was lying in the field in the outskirts of the village, whatever injuries were inflicted upon the deceased were likely to aggravate in absence of any medical assistance being given to the deceased and when the deceased did not receive even a glass of water for more than 12 hours.

15. Having gone through the medical evidence, it does appear that there was no injury on the head or chest of the deceased and since no injuries were inflicted with any lethal or sharp-cutting weapon like sword or dharia, nor was any stick blow dealt on the head or the chest of the deceased, it is not possible to hold that the accused had intended to cause death of the deceased.

16. It is, therefore, not possible to accept the contention of Mr.Shah, learned advocate for the appellant, that the case would not even fall under second part of Section 304 of IPC.

17. As regards the contention that there is no evidence to attribute any specific role to a particular

accused, it clearly transpires that all the four appellants-accused had assaulted the deceased. Even if the stick was recovered from the field of one of the accused, as stated in the recovery panchnama, the assault on the deceased by all the four accused in a field in the outskirts of the village on a winter night is sufficient to impute the common intention of the appellants-accused to inflict serious injuries on the deceased. Hence, all the appellants are required to be convicted of the offence punishable under Section 304 Part-II read with Section 34 of the IPC.

18. In view of the above discussion, we partly allow the appeal and alter the conviction of the four appellants [original accused Nos.1 to 4, namely, (1) Raysingbhai Ruplabhai Nayak, (2) Raghubhai Kalabhai Nayak, (3) Ranchhodbhai Ramsingh Nayak and (4) Amlabhai Ramsingh Nayak] for the offence punishable under Section 302 IPC read with Section 34 IPC to conviction for the offence punishable under Section 304 Part-II read with Section 34 IPC. All the appellants are sentenced to undergo rigorous imprisonment for a period of seven years. If appellants Nos.3 and 4 (Ranchhodbhai Ramsingh

Nayak and Amlabhai Ramsingh Nayak) have already undergone the sentence, they shall be released forthwith, if not otherwise required in any other case.

Appellants Nos.1 and 2 (Raysinghbhai Ruplabhai Nayak and Raghubhai Kalabhai Nayak) shall serve out the balance period of sentence.

Sd/-

(M.S.SHAH, J.)

Sd/-

(D.H.WAGHELA,J.)

(KMG Thilake)